IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.2090 OF 2007

In

WRIT PETITION NO.6615 OF 2002

Mohamed Hussain Mirasaheb Tajar : Applicant
(Orig.Defendant)

V/s.

Shri Atmaram Tukaram Saple, since
deceased through his heirs and legal
representatives:
Smt.Suhasini Atmaram Saple & Ors. : Respondents

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Mr.G.R.Rege with Mrs.S.A.Mudbidri for the applicant.
Ms Dipti Wadkar holding for Mr.S.B.Shetye for the respondents.

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CORAM : S.A.BOBDE, J.

DATE : SEPTEMBER 07, 2007.

P.C.

1. The applicant-petitioner was granted a stay by this Court on 20.1.2003, subject to his furnishing an undertaking only to the effect that he would not part with possession of the suit premises or create any third-party rights in the premises, etc. No other condition was

imposed. Nonetheless, the applicant filed an undertaking in this Court incorporating various clauses not even contemplated by the order of this Court. He has eventually breached one of such clauses which provides that if there are two defaults in making deposits, then the stay granted shall stand vacated. The applicant-petitioner having defaulted, the respondents applied for vacation of the stay which has been granted by the Court.

2. Mr.Rege, the learned counsel for the applicant-petitioner, is right in his submission that the stay cannot be treated as vacated because of non-compliance of a clause which was never directed to be executed by the Court as per the undertaking. There is no doubt that the applicant has not fulfilled the statement made by him on his own accord. That is far from the position that the applicant has breached the undertaking. Stay was not granted subject to the condition which the applicant inserted on his own accord and breached also. Further, it may be noted that none of the additional clauses undertaken by the applicant has been accepted by this Court.

3. The learned counsel for the respondents submitted that the applicant has made a false statement to the effect

that he has paid rent regularly. She points out that the applicant has, in fact, not paid rent regularly on three occasions. Mr.Rege submits that the intention was to use the term 'regularly' in the context of yearly payments. Since time for making payment was, in the first place, not fixed by any order of this Court and there is no written lease, it would not be appropriate to decide the context in which the term 'regularly' has been used in the application.

4. However, in the circumstances of this case, there was no reason for the trial Court to proceed with the execution of the decree. Further proceedings in Regular Darkhast No.22 of 2006 pending in the Court of Civil Judge, Junior Division, Malwan, are hereby stayed. Interim stay granted by this Court on 20.1.2003 is hereby continued. The applicant-petitioner shall deposit costs before the Trial Court within a period of two weeks from today.

5. The Civil Application stands disposed of.

6. All concerned to act on a copy of this order duly authenticated by the Registry.

S.A. BOBDE, J.